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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,816	01/16/2004	Michael W. Murphy	8540G-000233	6583
27572	7590	10/08/2008	EXAMINER	
HARNESS, DICKEY & PIERCE, P.L.C.			LEE, CYNTHIA K	
P.O. BOX 828			ART UNIT	PAPER NUMBER
BLOOMFIELD HILLS, MI 48303			1795	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/758,816	<b>Applicant(s)</b> MURPHY ET AL.
	<b>Examiner</b> CYNTHIA LEE	<b>Art Unit</b> 1795

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 01 July 2008.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-9 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-9 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application  
6) Other: \_\_\_\_\_

***Response to Amendment***

This Office Action is responsive to the amendment filed on 7/1/2008. Claims 1-9 are pending. Applicant's arguments have been fully considered and are not persuasive and Claims 1-9 are finally rejected for reasons stated herein below.

The Objection to the Drawings is withdrawn.

The 35 USC 112, 2<sup>nd</sup> rejection is withdrawn.

***Specification***

The amendment filed 7/1/2008 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: "the frame 122 may be laminated between the first sheet 66 and the second sheet 76"

Applicant is required to cancel the new matter in the reply to this Office Action.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 5-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Komada (US 7201991).

Regarding claim 1, Komada discloses a fuel cell comprising:

a first planar manifold defined between a first gas-impermeable element and an active element (region between plate 21 the electrode 3 in fig. 3);

a plurality of spacers (openings 24 and 25 in fig. 23) disposed within said first planar manifold, each of said plurality of said spacers and said first gas-impermeable element having an orifice formed therethrough;

a second planar manifold defined between said first gas-impermeable element and a second gas-impermeable element in a subjacent relationship to said first planar manifold (region between plates 21 and 22);

wherein a flow path is established from said second planar manifold through said orifice over said active element to said first planar manifold.

Regarding claim 2, Komada discloses an electrically conductive path extending through the fuel cell to provide continuity from said active element, through said plurality of spacers and said first gas-impermeable element to said second gas-impermeable element

Regarding claim 3, Komada discloses wherein said plurality of spacers are electrically conductive so as to establish said electrically conductive path.

Regarding claim 5, Komada discloses wherein said first gas- impermeable element is disposed in a substantially parallel spaced relation to said second gas-impermeable element such that said first planar manifold is substantially parallel with said second planar manifold.

Regarding claim 6, Komada discloses a second plurality of spacer disposed within said second planar manifold (the corrugation of plate 22 in fig. 3).

Regarding claim 7, Komada discloses wherein said plurality of spacers comprise a nested array of spacers disposed on said first gas-impermeable element.

Regarding claim 8, Komada discloses a frame interposed between said first gas-impermeable element and said second gas-impermeable element (14 in fig. 6)

Regarding claim 9, Komada discloses wherein said plurality of spacers are equidistantly spaced on said first gas-impermeable element within said first planar manifold (24 and 25 in fig. 3).

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Komada (US 7201991) in view of Bronoel (US 2001/0006745).

Komada does not disclose wherein said electrically conductive path further comprises an electrically conductive filler disposed in a via formed through said first gas-impermeable element. Bronoel teaches a separator plate wherein the electronic conduction is provided by uniformly distributed metal cylinders penetrating into the electrodes. See Abstract. It would have been obvious to one of ordinary skill in the art at the time the invention was made to add Bronoel's metal cylinders to the separator plate of Komada for the benefit enhanced electrical conduction to the separator plate of

Komada.

***Response to Arguments***

Applicant's arguments filed 7/1/2008 have been fully considered but they are not persuasive.

*Applicant asserts that Komada does not teach or suggest a flow path from a second planar manifold through the orifice over the active element to the first planar manifold.*

The Examiner respectfully disagrees. It appears that the Applicant has misunderstood the Examiner's interpretation of Komada. The plate 21 on Applicant's 1<sup>st</sup> gas impermeable element. The plate 22 reads on Applicant's 2<sup>nd</sup> gas impermeable element. Thus, the flow path is established from said second planar manifold through said orifice over said active element to said first planar manifold.

*Applicant asserts that the connecting pipes 14 are not disposed between the plates 21 and 22 as recited in claim 8.*

The Examiner respectfully disagrees. It is noted that the pipe 14 spans the thickness of the separator 8, and thus the pipe 14 is disposed between the first and second gas impermeable element 21 and 22.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cynthia Lee whose telephone number is 571-272-8699. The examiner can normally be reached on Monday-Friday 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Cynthia Lee/  
Examiner, Art Unit 1795

/PATRICK RYAN/  
Supervisory Patent Examiner, Art  
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